(2001) 09 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)	APPELLANT
Vs	
Reliance Industries Ltd.	RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Citation : 2002 3 CPJ 76

Hon'ble Judges : R.K.Anand , Moksh Mahajan J.

Final Decision : R.P.dismissed

Judgement

1. AN application has been made on behalf of the respondent under Section 13(2) of the MRTP Act, 1969 (the Act for brief) seeking review and, revocation of the Commission''s order dated 26.3.1999 on the ground that the letters annexed with the affidavit of Shri Rakesh Vashist, Assistant Director General (Investigation and Registration) [ADG] by way of evidence in support of the DG''s case that the respondent had adopted and indulged in restrictive trade practices and pursuant thereto, offered discriminatory and quantity discounts, can''t be read in evidence, as the contents of these letters have not been proved. The other ground urged in the review application is that the gateways pleaded by the respondent under Section 38(1) of the Act were not considered before passing the impugned cease and desist order. The third ground taken in the review petition is that the interpretation of the expression "consumer" contained in the Commission''s aforesaid order of 26.3.1999 is erroneous and, therefore, the above order is not sustainable.

2. WE have heard the learned Senior Advocate for the respondent as well as that of the DG and also considered the written submissions filed by them. Briefly, the facts of the case are that the DG had undertaken an investigation, under Section 11(2) of the Act, into the price mechanism and marketing arrangements of the respondent, Reliance Industries Ltd. and based on the investigation, made an application under Section 10(a)(iii), stating therein, that the respondent had been giving discriminatory and quantity discounts to its customers of Purified Teraphthlate Acid (PTA) and this trade practice adopted by the respondent, falls

foul of the provisions of Section 33(1)(e) of the Act. On the basis of the above application, a Notice of Enquiry dated 20.11.1997 charging the respondent with adoption of and indulgence in restrictive trade practices within the meaning of Section 33(1)(a) read with Section 2(o)(ii) of the Act was issued and on conclusion of the inquiry, a cease and desist order was passed by the Commission on 26.3.1999. Aggrieved by this order, the respondent has filed the present review application. The six letters, which according to the respondent, cannot be read in evidence, as the same have not been proved, were annexed with the affidavit of evidence of the ADG, tendered on behalf of the DG. It is pertinent to mention that the docket order of 22.4.1998 reveals that the DG had chosen to rely only on documentary evidence and no oral evidence was proposed to be led on behalf of the DG. It is also relevant to point out here that the six letters annexed with the affidavit of the ADG are the replies which were addressed to the DG by the buyers of PTA in connection with the investigation under Section 11(2) of the Act and throw light on the trade practice of discounts linked with off-take, offered by the respondent. It may also be stated here that these letters constitute the entire documentary evidence filed by the DG in this case.

It may also be mentioned here that in the docket order dated 6.6.1998 the objection of the learned Advocate for the respondent that these letters should not form part of evidence has been noted but no ruling was given by the Commission whether the same were inadmissible in evidence. The fact remains that these letters are annexed with the ADG''s affidavit and are part of the Court record and constitute the basis of DG''s application under Section 10(a)(ii) of the Act. Even if these letters are ignored as has been urged by the learned Advocate for the respondent, the allegations of restrictive trade practices adopted by and indulged in by the respondent stand fully substantiated from the reply to the Notice of Enquiry and the affidavit of evidence filed on behalf of the respondent. In this context, it may be pointed out that both in the reply to the Notice of Enquiry as well as the affidavit of evidence filed on behalf of the respondent, it transpires that all the parties, mentioned in the DG''s application, have purchased PTA from the respondent during the relevant period and have utilised the same for the manufacture of downstream products such as Polyester Synthetic Fibres, Polyester Yarn and Polyester Films. It further transpires therefrom, that the rates at which the supply of PTA was made by the respondent were fixed on a negotiated basis. It has also been stated therein that "there is no hard and fast rule that prices to all buyers will be the same". It has been further stated that if Indo Rama Synthetics Ltd. has availed of a higher discount, it is indicative of its ability to negotiate a lower price as compared to Ester Industries Ltd. which may not have demanded such rate difference or may have settled for lower rate difference. These statements have been made in para 3 page 5 of the respondent''s reply to the Notice of Enquiry as well as in para 3 of the affidavit of Shri Padmakumar, Assistant Vice-President (Marketing) of the respondent. It is thus obvious that both Indo Rama Synthetics Ltd. and Ester

Industries Ltd. purchased PTA from the respondent at different rates and were given different discounts. It is also admitted by the respondent in its reply as well as the affidavit of evidence that it issued credit notes to its buyers of PTA in respect of rate difference. It thus follows that the respondent supplied PTA to the dealers/purchasers at different rates depending upon the negotiating skill of the concerned dealer/buyer. It also follows that purchasers of higher quantity of PTA were given a higher rate of discount as compared to a buyer of smaller quantity. This trade practice of offering discriminatory and quantity discounts by the respondent constitutes a restrictive trade practice within the meaning of Section 33(1)(e) of the Act and the charge of adoption of restrictive trade practices by the respondent stands fully substantiated and has been rightly held to be so in the Commission''s order of 26.3.1999.

3. IT is true that gateways under Section 38(1) of the Act were pleaded by the respondent stating that grant of discriminatory discounts and discounts linked with off-take is a practice prevalent in trade and the same are also offered by international suppliers. In this context, it may be mentioned here that the respondent has also taken the plea that the supplies of PTA were made at different rates to different buyers on the basis of negotiating skill of the buyer. Moreover, as the respondent is a major supplier of PTA, a trade practice adopted by it will become a practice of the trade also but it can''t be justified or allowed to pass through the gateways. Trade practice of offering quantity discounts or discounts linked with off-take has deleterious and detrimental effect on competition as small buyers/dealers will not be able to compete with large buyers of PTA in the manufacture of downstream products and the result will be distortion and restriction of competition. In view of the above, the benefit of gateways is not admissible to the respondent and, therefore, the same was not given to the respondent even though it was not so mentioned in the order under review and a cease and desist order was passed by the Commission. The order of 26.3.1999 by the Commission which is sought to be reviewed is a speaking order otherwise, and has taken into consideration all the relevant rival contentions and submissions and, therefore, the present review application deserves to be dismissed as misconceived. It may be mentioned here that the respondent in the review application has also challenged the Commission''s interpretation of the expression "consumer", as erroneous. Evaluation of evidence, interpretation of provisions of law and more particularly whether the buyers of PTA are consumers or manufacturers who are purchasing it for commercial purposes and for resale as downstream products, may be challenged in an appeal as the same do not fall within the ambit of review. The respondent has filed a review petition under Section 13(2) of the Act and there is no error apparent in the Commission''s order and, therefore, no review is called for. The interpretation of expression "consumer" by the Commission and conclusion arrived at on the basis of the interpretation need not be dealt within this order as the scope of review is different from that of appeal and at any rate review does not permit rehearing on the same facts. In view of our aforesaid discussion, the review petition is hereby

dismissed. The stay order granted on 23.7.1999 is also vacated. R.P. dismissed.

